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TIONG LEE SUNG

v.

B I G INDUSTRIAL GAS SDN BHD & ANOTHER APPEAL

B

HIGH COURT SABAH & SARAWAK, SIBU
CLEMENT SKINNER J
[CIVIL APPEAL NO: 11-36-2001 & 11-37-2001]
29 JANUARY 2007

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LAND LAW: *Sale of land - Sale by auction - Setting aside - Material irregularity in conduct of sale - Allegation of - Whether sold at grossly undervalued price - Whether there was duty or obligation on registrar to inspect land - Subordinate Courts Rules 1980, O. 30 r. 14(1), (2), (3)*
D *- Whether there was material irregularity by registrar or government valuer - Whether there was injustice caused to appellants - Sarawak Land Code (Cap 81)*

LAND LAW: *Sale of land - Sale by auction - Setting aside - Material irregularity in conduct of sale - Allegation of - Whether 10% of purchase*
E *price paid on fall of hammer constituted material irregularity - Whether successful purchaser should have been required to pay 25% - Request for reduction by Sarawak Land Association and agreement of registrar to said request - Whether bona fide - Whether irregularity or injustice occasioned*
F *by registrar's exercise of discretion to reduce amount payable - Subordinate Courts Rules 1980, O. 30 r. 14(3) - Sarawak Land Code (Cap 81)*

LAND LAW: *Sale of land - Sale by auction - Setting aside - Beneficial interest - Claim for - Whether supporting documents produced - Doctrine of resulting trust - Whether could impeach title shown on register -*
G *Asserting beneficial interest in land through concept of resulting trust - Whether equitable claim would not vitiate the sale - Whether there was material irregularity in conduct of sale - Sarawak Land Code (Cap 81)*

This was the hearing of two appeals heard together as they
H concerned the same subject matter. The facts giving rise to these appeals were that the respondent in the first appeal, BIG Industrial Gas Sdn Bhd (BIG Gas), as judgment creditor, took out execution proceedings against the appellant in the first appeal (Mr Tiong Lee Sung) by seizing his 1/8 undivided share in a parcel
I of land Lot 10 Block 10 Sibu Town District (the said land) and thereafter applied to sell the same by public auction. The registrar fixed the reserve price for Mr Tiong's 1/8 undivided share at

RM35,000 and in doing so had relied on a valuation report submitted by the land office valuer. At the public auction, the third respondent in the second appeal (Anna Hon) bought Mr Tiong's 1/8 undivided share in the said land for RM35,010, paid her 10% deposit on the fall of the hammer and thereafter the balance of the auction price in accordance with the conditions of the sale. Mr Tiong applied to set aside the sale. Mr Tiong's parents who were the appellants in the second appeal (Mr Tiong Wang Chiong and Wong Siik Ting), who were living in a house constructed on a portion of the said land which apparently represented Mr Tiong's 1/8 share, obtained leave to intervene and also applied to set aside the sale. Both Mr Tiong and his parents were unsuccessful before the magistrate. Hence, these appeals.

On the first ground of appeal, the appellants submitted that the sale of Mr Tiong's 1/8 undivided share in the said land should be set aside because there was a material irregularity in the conduct of the sale, in that 1/8 undivided share was sold at a grossly undervalued price *ie*, because the registrar did not visit the land and inform the government valuer of the house on the said land. It was the appellants' argument that the mistake of the registrar coupled with the mistake of the government valuer caused grave injustice to the appellants. On the second ground of appeal, the appellants submitted that there was a material irregularity in the conduct of the sale when the successful bidder was required, in the conditions of sale, to only pay 10% of the purchase price at the fall of the hammer. According to the appellants, the successful purchaser should have been required to pay 25% of the purchase price as required by O. 30 r. 14(2) Subordinate Courts Rules ('the SCR'). The third ground of appeal was relied on by the interveners *ie*, Mr Tiong's parents who claimed beneficial interest to the extent of 1/16 shares in Mr Tiong's 1/8 undivided shares in the said land on the ground that they had paid for half the purchase price of the 1/8 undivided share when it was originally purchased. They claimed to have spent RM50,000 to build a house on the land, paid rates for the house to the Sibu Municipal Council and renovated the house for RM50,000. The parents claimed that they had done all these on the promise of their son, Mr Tiong, that they would be entitled to occupy the land rent free during their lifetime. The parents further contended that although 1/8 undivided share in the said land was registered in Mr Tiong's name, a resulting trust had arisen in their favour to the

A extent of their contribution and so the sale must be set aside because a judgment creditor could only seize and sell what beneficially belonged to a judgment debtor.

The respondents in both appeals denied that the grounds and B reasons relied on by the appellants in both these appeals were good or sufficient reasons, whether in law or in equity to set aside the sale. It was the respondents' submission that there had been no material irregularity in the conduct of the sale nor had Mr Tiong's parents a tenable claim to a beneficial interest to the C extent of 1/16 share in his 1/8 interest in the said land that was sold.

Held (dismissing the appeals with costs):

(1) There was no such duty or obligation on the registrar to D inspect the land to be auctioned off to ascertain its condition and thereafter to inform the government valuer of his findings when requesting the latter to fix a fair market value for the land. The courts' role where land has been seized to be sold under a prohibitory order was largely supervisory and not E investigative. The matters to be undertaken prior to a sale of land under the supervision of the court are set out in O. 30 r. 14(1), (2) and (3) SCR and there was nothing stated in those provisions to suggest that the court, whether it be the Sessions Judge or Magistrate or Registrar has an investigative F role to play, such as to investigate the state or condition of the land or interest therein to be sold, as contended by the appellants herein. It was never intended by the Rules Committee that the court should undertake such a function. There was nothing irregular or improper in what the registrar G had done in this case. Further, the appellants were only assuming that the government valuer did not visit the said land. It must not be overlooked that the government valuer was asked to value Mr Tiong's 1/8 share in the said land and there was no indication on the title to the said land which H portion of the said land represented Mr Tiong's 1/8 share or whether any building had been constructed on it. Accordingly, there was no material irregularity, whether by the registrar or the government valuer in the conduct of the sale nor was any injustice caused to the appellants by their acts. (paras 28, 29, I 30, 31, 32 & 33)

(2) In agreeing to allow only 10% of the purchase price to be paid on the fall of the hammer instead of the 25% mentioned in O. 30 r. 14(3) SCR, the registrar was merely responding and acceding to representation made to him in that regard by the Sarawak Law Association ('the association'). The association had made the request in the interest of all interested parties and it was stated in the newsletter of the association. The request for the reduction by the association and the agreement of the registrar to the association's request was *bona fide*. There was no element or hint of impropriety or irregularity in how and why that decision came about. Also, the registrar had the right to entertain the request of the association. The word 'may' in r. 14(3) SCR indicates a discretion on the part of the court in approving the conditions of sale, including the amount payable on the fall of the hammer. And since the rule already gives the court a discretion on a matter to be stated in the conditions of sale, any discretion so exercised by the court would only effect or concern the conditions of sale and not the rule itself. It does not amount to an amendment of the rule. No irregularity or injustice had been occasioned by the registrar's exercise of his discretion to reduce the amount payable on the fall of the hammer because before the conditions of sale authorizing such down payment was approved, the notice of appointment to obtain the court's approval to the conditions of sale must be served on the execution creditor and the judgment debtor who have a right to be heard and object to such conditions of sale. Mr Thiong had that opportunity here but did not avail himself of it. (paras 35, 36, 37, 38, 39 & 40)

(3) Mr Tiong's parents have not produced in support any documents or receipts in respect of the rather large sums of money they claimed to have spent in allegedly buying a share in the land and in building the house and thereafter renovating it. Thus, Mr Tiong's parents claim to have a beneficial interest in his 1/8 share in the said land or that he held the same on resulting trust for them must be rejected. There are limits to the doctrine of a resulting trust. It cannot impeach the title shown on the register. Anyone dealing with the register is entitled to depend on what is reflected on the register. No one is required to go behind the register before he can rely on it. That is the essential feature of the Torrens system of registration, which is practiced in Sarawak. The

plaintiff here as judgment creditor was entitled to rely on the register when seizing Mr Tiong's 1/8 share in the said land and applying for its sale. Anne Hon was a *bona fide* purchaser for value of Mr Tiong's 1/8 share in the said land at the auction sale. In the context in which Mr Tiong's parents sought to assert their beneficial interest in the said land through the concept of a resulting trust, their equitable claim would not vitiate the sale. It had not been shown that there was a material irregularity in the sale. (paras 42, 43, 44 & 47)

Case(s) referred to:
Arab-Malaysian Finance Berhad v. Lau Ngee Ang & Sons Sdn Bhd & Ors [2000] MLJU 257 ***(refd)***
Karuppiah Chettiar v. Subramaniam [1971] 2 MLJ ***(refd)***
Re Joseph Clayton Ltd, Smith v. The Company [1970] 1 Ch 257 ***(refd)***
SA Andavan v. Siow Meow Choi [1976] 1 MLJ 147 ***(refd)***
Teh Bee v. K Maruthamuthu [1977] 2 MLJ 7 ***(refd)***

Legislation referred to:
Sarawak Land Code, s. 39A(1)
Subordinate Courts Rules 1980, O. 30 r. 14(1), (2), (3), (4)

For the appellants in both appeals - Dr Chew Peng Hui; M/s Battenberg & Talma
For the respondents - Dorsen Hassen; M/s Huang & Co
For the successful bidder - Wong Ho Leng; M/s Wong Ho Leng & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Clement Skinner J:

[1] This is the hearing of two appeals which were heard together as they concern the same subject matter, raise related issues and are based on common facts.

[2] The appeals are against the decision of the learned Magistrate. In the first appeal, the appellant is Mr. Tiong Lee Sung who was the defendant in the court below, while the respondent is B.I.G. Industrial Gas Sdn Bhd who was the plaintiff.

[3] In the second appeal the appellants are Tiong Wang Chiong and Wong Siik Ting, the parents of Mr. Tiong Lee Sung, the appellant in the first appeal, while the 1st respondent is B.I.G. Industrial Gas (the respondent in the first appeal), the 2nd respondent is the Court Bailiff who conducted an auction of Mr. Tiong Lee Sung's 1/8 undivided share in a parcel of land known as Lot 10 Block 10 Sibu Town District ('the said land'), while the 3rd respondent is one Anna Hon, the successful bidder at the auction.

[4] For convenience I shall continue to refer to the parties as follows, Mr. Tiong Lee Sung as 'Mr. Tiong', B.I.G. Industrial Gas Sdn Bhd as 'BIG Gas', Tiong Wang Chiong and Wong Siik Ting together as 'Mr. Tiong's parents', the Court Bailiff as 'the bailiff' and Ms Anna Hon as 'Anna Hon'.

[5] The facts giving rise to these appeals are these.

[6] BIG Gas commenced proceedings against Mr. Tiong in the Magistrates' Court to recover a debt of RM6,160 plus costs of RM279 with interest thereon at 1% per month from the date of overdue payment to the date of judgment and thereafter at the rate of 8% per annum till full payment.

[7] On 12 May 1999 a judgment in default of appearance was entered against Mr. Tiong. BIG Gas then, as judgment creditor, took out execution proceedings against Mr. Tiong by seizing his 1/8 undivided share in the said land and thereafter applied to sell the same by public auction. The Registrar of the Subordinate Court fixed the reserve price for Mr. Tiong's 1/8 undivided share at RM35,000.

[8] In doing so the registrar relied on a valuation report submitted by the Land Office Valuer, Sibu at the request of the registrar.

[9] At the public auction held on 24 November 2000, Ms. Anna Hon bought Mr. Tiong's 1/8 undivided share in the said land for RM35,010. She paid her 10% deposit on the fall of the hammer and thereafter the balance of the auction price in accordance with the conditions of sale.

[10] After the sale of his 1/8 share, Mr. Tiong applied to set aside the sale. Mr. Tiong's parents who are living in a house constructed on a portion of the said land which apparently represents Mr. Tiong's 1/8 share, obtained leave to intervene and also applied to set aside the sale but both Mr. Tiong and his parents were unsuccessful before the learned Magistrate. Hence these appeals.

[11] One other matter should be mentioned here. It is this: After the action was commenced against Mr. Tiong at the Magistrates' Court, the summons was served on him by way of substituted service, whereafter default judgment was obtained against him. When BIG Gas commenced execution proceedings all relevant papers were also served on him by way of substituted service. He was said to be in Brunei where he has a business. In these appeals Mr. Tiong has raised no issue regarding service.

[12] In these appeals the appellants have raised the same grounds they raised in the court below. The main thrust of their attack which is their first ground, is that the sale of Mr. Tiong's 1/8 undivided share in the said land should be set aside because there was a material irregularity in the conduct of the sale, in that, the 1/8 undivided share was sold at a grossly undervalued price.

[13] The appellants say Mr. Tiong's 1/8 undivided share was grossly undervalued because after the auction, Mr. Tiong obtained a valuation report on his 1/8 undivided share in the said land from a firm of professional valuers, namely, Messrs C H Williams Talhar Wong & Yeo dated 4 December 2000 (hereafter 'Messrs C H Williams') which values his 1/8 undivided share at RM124,000. But the respondents draw attention to the fact that at p. 10 of Messrs C H Williams' report it says that the value of the 1/8 undivided share as vacant land is valued at RM34,000 while the dwelling house built thereon is valued at RM90,000, giving a combined value of RM124,000.

[14] The respondents draw further attention to the following facts which are all stated in Messrs C H Williams' report:

(a) that the total size of the said land is some 4,047 sq meters or 1 acre, thereby making Mr. Tiong's 1/8 share to be some 12.50 points in size;

(b) that a 'special condition' indorsed on the title to the said land states that it is to be used only for agricultural purposes;

(c) that there are some 9 other persons registered as co-proprietors of the said land along with Mr. Tiong and that 'the registered co-proprietors of the subject land has unofficially portioned the said land into 8 smaller pieces in such a manner that Mr. Tiong holds and owns the third piece from Jalan Poh Yew; the double-storey reinforced concrete dwelling house, bearing No. 37, was built and owned by Mr. Tiong Lee Sung only'.

[15] According to the appellants the gross undervaluation, which resulted in the material irregularity in the conduct of the auction sale, resulted from two things:

(a) the instructions given by the Registrar of the Subordinate Court to the government valuer at the Land Office, requesting the latter to assess the fair market value of the 1/8 undivided share in the said land without indicating to the valuer whether there was a house or not on the 1/8 undivided share. It is the contention of the appellants that the Registrar of the Subordinate Court should have inspected the land before instructing the government valuer; and

(b) the government valuer appears to have valued the 1/8 undivided share without inspecting it; otherwise there would be no reason for the large disparity with the valuation made by Messrs C H Williams.

[16] It is the submission of the appellants that the mistake of the registrar coupled with the mistake of the government valuer caused grave injustice to the appellants. According to the appellants, together the mistakes constitute a material irregularity in the conduct of the sale of Mr. Tiong's 1/8 undivided share.

[17] The appellants contend that under O. 30 r. 14(4) Subordinate Courts Rules ('the SCR'), one of the grounds on which the court may set aside a sale is for 'material irregularity'. According to counsel for the appellant what amounts to 'material irregularity' must depend on the facts disclosed in each case and in deciding whether material irregularity exists, the court should not confine itself only to the point in time when the auction took place, but should review the whole process leading up to the sale. In support of what they say the appellants referred the court to several cases, namely:

A (a) in *Arab-Malaysian Finance Berhad v. Lau Ngee Ang & Sons Sdn Bhd & Ors* [2000] MLJU 257, the sale of land by public auction was set aside even though the successful bidder was a *bona fide* purchaser. The sale was set aside on 2 grounds, namely, (i) material irregularity because the auctioneer who B conducted the sale was not a licensed auctioneer and the order for sale had only appointed a particular auctioneer to conduct the sale; and (ii) the sale should not have proceeded as there was an order of stay which the auctioneer denied any knowledge of until it was too late.

C (b) In *Re Joseph Clayton Ltd, Smith v. The Company* [1970] 1 Ch 257, the judge in making the order for sale ordered the land to be sold at a reserve price of not less than £8,400 but through a mistake of the Master's Chambers, the figure stated D in the sealed instructions furnished to the auctioneer was £4,575. As a result the property was sold at £5,000. The sale was set aside even though the mistake was that of the Master's Chambers and did not involve the successful bidder at all.

E (c) In *S.A. Andavan v. Siow Meow Choi* [1976] 1 MLJ 147, the judgment creditor proceeded to sell the land in question without applying for a prohibitory order first. Even though there was nothing wrong with the auction sale itself, the sale was set aside.

F **[18]** The second ground of appeal is that there was a material irregularity in the conduct of the sale when the successful bidder was required, in the conditions of sale, to only pay 10% of the purchase price at the fall of the hammer. According to the G appellants the successful purchaser should have been required to pay 25% of the purchase price as required by O. 30 r. 14(3) SCR.

[19] According to the appellants, the reason why the conditions of sale only required 10% of the purchase price to be paid on the H fall of the hammer was because the Advocates' Association of Sarawak had made representation to the registrar for the reduction and the latter agreed to it. This is made clear from the Association's newsletters ref: NL7/89 dated 23 February 1989.

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[20] The appellants now contend that despite the Sarawak Advocates' Association's representation, the agreement reached between the Association and the Registrar on this matter cannot operate as an amendment to the Subordinate Courts Rules without the rules themselves being first amended.

[21] The third ground of appeal is relied on by the interveners ie, Mr. Tiong's parents who claim a beneficial interest to the extent of 1/16 shares in Mr. Tiong's 1/8 undivided shares in the said land on the ground that they had paid for half the purchase price of the 1/8 undivided share when it was originally purchased from one Loh Chiew Kui for RM20,000 in 1988. The parents claim to have spent RM50,000 in 1990 to build a house on the land which is known as No. 37, Jalan Poh Yew, 96000 Sibu. The parents also claim that they have been paying the rates for the house to the Sibu Municipal Council. The parents say they later renovated the house for RM40,000 and added an extension for another RM10,000. They say they did all this on the promise of their son, Mr. Tiong that they would be entitled to occupy the land rent free during their lifetime during which time the land would not be disposed off or dealt with by him without their agreement. Mr. Tiong has confirmed this to be so.

[22] Mr. Tiong's parents contend that although the 1/8 undivided share in the said land was registered in Mr. Tiong's name, a resulting trust has arisen in their favour to the extent of their contribution and so the sale must be set aside because a judgment creditor can only seize and sell what beneficially belongs to a judgment debtor and no more. In support, the parents relied on the case of *Karuppiah Chettiar v. Subramaniam* [1971] 2 MLJ at pp. 116 and 117 where it was said that a judgment creditor takes only the property of his debtor 'subject to every liability' under which the debtor himself held it.

[23] It is the contention of counsel for the parents that if this court believes their story ie, that they paid for half the purchase price; that they paid RM50,000 to construct the house now on the land; that they paid RM40,000 to renovate it and another RM10,000 to add an extension to the house; that they live in the house and so did a daughter (until she got married), then the court is at liberty to find that there is a resulting trust in their favour and that the seizure and sale of the 1/8 undivided share in the said land was bad in law.

[24] The respondents in both appeals deny that the grounds and reasons relied on by the appellants in both these appeals are good or sufficient reasons, whether in law or in equity to set aside the sale. They submit that there has been no material irregularity in the conduct of the sale nor has Mr. Tiong's parents a tenable claim to a beneficial interest to the extent of 1/16 share in his 1/8 interest in the said land that was sold. In particular the respondents say that Mr. Tiong had breached the provisions of s. 39A(1) of the Sarawak Land Code, in that, the dwelling house now on the land was not built predominantly for agriculture purposes and hence should not be taken into account in valuing the land. Further, the respondents say anyone looking at the title deed to the said land will see that there is no indication that there was a house constructed on Mr. Tiong's 1/8 undivided share in the said land. Accordingly, the respondents say the registrar was not obliged to conduct a search or investigate the land to ascertain if it had been built on before instructing the government valuer to ascertain a fair market value for the 1/8 undivided share.

[25] In deciding these appeals, I accept it that after an auction is held, by O. 30 r. 14(4) SCR 1980 the court that authorised the sale may 'confirm the sale, or may on grounds of any fraud or material irregularity set the sale aside'. I also agree with the submission of counsel for the appellants that whether there has been a 'material irregularity' in the sale is a question that must be determined from an examination of the facts and circumstances disclosed in each case and should not be confined to that point in time of the holding of the auction.

[26] With that I turn to consider the contentions of the parties.

Was there a material irregularity in the sale for the reasons alleged by the appellants ie, because the Registrar did not visit the land and inform the government valuer of the house on the said land thereby resulting in a gross undervaluation of the 1/8 undivided share?

[27] The answer to this question will turn on whether there is any duty or obligation on the part of the registrar to inspect the land to be auctioned off to ascertain its condition and thereafter inform the government valuer of his findings when requesting the latter to fix a fair market value for the land.

[28] In my judgment there was no such duty or obligation on the registrar to do so. My reasons for saying so are these. The courts' role where land has been seized to be sold under a prohibitory order, is largely supervisory and not investigative. Thus O. 30 r. 14(1) SCR states: 'Sales of land or any interest therein, seized under this order, shall be subject to the supervision of the Sessions Court Judge or a First Class Magistrate'.

[29] Although sub-rule (2) goes on to state that the bailiff shall prepare particulars and conditions of sale, in practice this is done by the execution creditor who submits the particulars and conditions of sale to the court for approval, again in its supervisory role. The matters to be undertaken prior to a sale of land under the supervision of the court are set out in O. 30 r. 14(1), (2) and (3) SCR and there is nothing stated in those provisions to suggest that the court, whether it be the Sessions Judge or Magistrate or the registrar has an investigative role to play, such as to investigate the state or condition of the land or interest therein to be sold, as now contended by the appellants here. Not only is there nothing in the rules that places such a duty on the courts, it is my view that it was never intended by the Rules Committee that the court should undertake such a function. In the first place, the court is ill suited to carry out such investigations. Secondly, to what matters would such investigations extend? Are they to be confined to the conditions of title or to the physical conditions on the land only?

[30] In my judgment there was nothing irregular or improper in what the registrar had done in this case. Since it was stated in the conditions of sale that 'the sale shall be subject to a reserve price to be fixed by the Registrar of the Subordinate Court based on the valuation of the Lands & Surveys Department, Sibu', it was perfectly in order for the registrar to forward to the government valuer a copy of the order of court dated 14 September 2000 in which the 1/8 undivided share in the said land as well as the said land is fully described, and to request for a valuation of the 1/8 share to be sold.

[31] With regard to the government valuer's valuation of RM35,000 for the 1/8 share in the said land, the appellants complained that the valuation was low and that the government valuer had a duty to visit the land in question. According to the appellants if the government valuer had visited the said land she

would have noticed the house on the said land and so given it a higher value as Messrs C H Williams did. I do not agree. The appellants are only assuming that the government valuer did not visit the said land. I am not prepared to make such an assumption. It must not be overlooked that the government valuer was asked to value Mr. Tiong's 1/8 share in the said land and there is no indication on the title to the said land which portion of the said land represented Mr. Tiong's 1/8 share or whether any building had been constructed on it. But even if the government valuer had visited the said land, how would she know that House No. 37 was built on Mr. Tiong's 1/8 share when the arrangement which Mr. Tiong had entered into with his co-proprietors was described by Messrs C H Williams as an 'unofficial' arrangement? Besides, it must also not be overlooked that Messrs C H Williams had valued Mr. Tiong's 1/8 share (without house) at RM34,000 also.

[32] Quite apart from the above, if Mr. Tiong had wished to challenge the government valuer's valuation for any reason, he had every opportunity to do so earlier when the reserve price was being fixed, at which stage the government valuer's valuation could have been challenged or questioned on the grounds it is now questioned. Mr. Tiong not having availed himself to the opportunity to do so, it is too late in the day to raise this complaint.

[33] Accordingly I find that there was no material irregularity, whether by the registrar or the government valuer in the conduct of the sale nor was any injustice caused to the appellants by their acts. The facts disclosed here are very different from the facts on which the sales were set aside in the three cases referred to the court. For that reason I have not found them to be of any assistance to the appellants here.

Did the fact that the Conditions of Sale only require that 10% of the purchase price be paid on the fall of the hammer instead of 25% constitute a material irregularity?

[34] In my judgment it did not and I say so for the following reasons.

[35] In agreeing to allow only 10% of the purchase price to be paid on the fall of the hammer instead of the 25% mentioned in O. 30 r. 14(3) SCR, the registrar was merely responding and acceding to representation made to him in that regard by the

Sarawak Law Association ('the Association'). The Association had made the request in the interest of all interested parties and it is stated in the Newsletter of the Association (NL7/89) dated 23 February 1989 that 'This is to facilitate and attract more bidders to attend and bid at auction sales which have been rather poorly attended of late'. A B

[36] It is clear from what I have just stated that the request for the reduction by the Association and the agreement of the Registrar to the Association's request was *bona fide*. There is no element or hint of impropriety or irregularity in how and why that decision came about. C

[37] The next question that must be asked is, did the registrar have the right to entertain the request of the Association, and if so, did the reduction operate as a *de facto* amendment to the SCR without it being officially amended as alleged by the appellants? In my judgment the registrar had the right to do what he did and there was no need to amend the SCR to give effect to his decision. My reasons for saying so follow. D

[38] As I indicated earlier, under O. 30 r. 14(1) SCR all sale of land seized under a Prohibition Order is effected under the supervision of the court. By O. 30 r. 14(2) the bailiff is obliged, the word being 'shall', to prepare particulars and conditions of sale and submit them for the approval of the court. Most importantly, r. 14(3) states that 'the conditions of sale may provide that part only, not being less than one quarter, of the purchase price shall be payable on the fall of the hammer, and the balance at a stated time not exceeding one month thereafter'. E F

[39] The word 'may' clearly indicates a discretion on the part of the court in approving the conditions of sale, including the amount payable on the fall of the hammer. And since the rule already gives the court a discretion on a matter to be stated in the conditions of sale, any discretion so exercised by the court will only effect or concern the conditions of sale and not the rule itself. It does not amount to an amendment of the rule as alleged. G H

[40] Further, I do not think any irregularity or injustice had been occasioned by the registrar's exercise of his discretion to reduce the amount payable on the fall of the hammer because before the conditions of sale authorising such down payment is approved, the notice of appointment to obtain the court's approval to the I

conditions of sale must be served on the execution creditor and the judgment debtor who have a right to be heard and object to such conditions of sale. Mr. Tiong had that opportunity here but did not avail himself to it.

Would the beneficial interest and resulting trust claimed by Mr. Tiong's parents in his 1/8 share defeat the sale?

[41] In considering this ground I must keep at the forefront of my mind that what Mr. Tiong and his parents say regarding their claim to a beneficial interest in his 1/8 share in the said land and the assertion of a resulting trust that arose that arose from arrangements made between themselves and it is not their case that their private arrangements are reflected or noted on the register by way of a caveat or otherwise nor is it known at any of the respondents here. And as far as the doctrine of a resulting trust is concerned, I accept it that where A provides 1/2 the purchase money for the acquisition of property with B, there is a presumption that B holds 1/2 share in resulting trust for A. But here Mr. Tiong and his parents are trying to use the doctrine to set aside a concluded sale by public auction on the grounds of a material irregularity in the sale. The question is: was there a material irregularity in the sale because of the alleged trust or beneficial claim?

[42] I do not find so. In the first place, with regard to Mr. Tiong's parents assertion about their beneficial interest and a resulting trust and how such trust arose, I am not obliged to accept uncritically their assertions. Apart from their bare assertions on the matter, they have not produced in support any documents or receipts in respect of the rather large sums of money they claim to have spent in allegedly buying a share in the land and in building the house and thereafter renovating it. I would expect there to be at least some documents in support of their assertions regarding this aspect of their case. The only documents they have produced are the receipts issued by the Sibu Municipal Council in respect of assessment paid for the home No. 37, but I find these receipts most equivocal, in that, the receipts are in the name of "Tiong Lee Sung & Partner". The term "partner" in those receipts can mean so many things that I do not find the receipts of any assistance to Mr. Tiong's parents.

[43] For the above reasons I reject Mr. Tiong's parents claim to have a beneficial interest in his 1/8 share in the said land or that he held the same on resulting trust for them.

[44] In the second place, I agree with Mr. Wong Ho Leng of counsel for Anna Hon, that there are limits to the doctrine of a resulting trust. I agree with him that it cannot impeach the title shown on the register. The register holds out to the whole world that the property, if registered in the name of A, belongs to A. Anyone dealing with the register is entitled to depend on what is reflected on the register. No one is required to go behind the register before he can rely on it. That is the essential feature of the Torrens system of registration, which is practised in Sarawak. In my judgment the plaintiff here as judgment creditor was entitled to rely on the register when seizing Mr. Tiong's 1/8 share in the said land and applying for its sale. As far as Anne Hon is concerned, she is a *bona fide* purchaser for value of Mr. Tiong's 1/8 share in the said land at the auction sale.

[45] In *Teh Bee v. K. Maruthamuthu* [1977] 2 MLJ 7 the Federal Court held:

(a) the fact that the register document of title was in the name of the appellant was conclusive evidence that the title to the land was vested in the appellant;

(b) under the Torrens system the register is everything and it would be wrong to allow an investigation as to the right of the person to appear upon the register when he holds the certificate of title.

[46] And at p. 12 the Federal Court said:

> It is in fact the registration and not its antedents which vests and divests title.

[47] In the context in which Mr. Tiong's parents seek to assert their beneficial interest in the said land through the concept of a resulting trust, I find that their equitable claim would not vitiate the sale. It has not been shown that there was a material irregularity in the sale.

[48] In the result, for all the reasons I have given I dismiss both these appeals with costs.